

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6083 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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LAXMANJI @ LAKHAJI BUDHAJI THAKOR

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for Petitioner

MR GOHIL, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/02/99

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is preferred by the petitioner-detenu, who has been detained by the Commissioner of Police, Ahmedabad, vide order No.PCB/DTN/PASA/195/1998 dated 14th July, 1998, produced at Annexure-A, under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (PASAA for short), exercising powers vested in him under Section

3(2) of the Act.

2. The ground for detention is that the petitioner is a bootlegger and is involved in activities which are prejudicial to the maintenance of public order. In the reasons for detention produced at Annexure-B, the detaining authority has shown that five offences are registered against the petitioner-detenu and the investigation is yet not complete. Additionally, two incidents - one of 2nd July, 1998 and another of 3rd July, 1998 - are quoted in those reasons to indicate that the petitioner, in order to pursue his bootlegging activities, used force and intimidation to members of public. The detaining authority has further recorded that the public at large are not prepared to lodge any complaint against the petitioner out of his fear and, therefore, the petitioner needs to be detained.

3. Ms. Kachhavah, learned advocate appearing for the petitioner, submitted that the petitioner has been wrongly detained. There is no breach of public order and there is no activity that can be labelled as an activity prejudicial to the maintenance of public order. The petitioner is already booked for prohibition offences and the two incidents which are narrated, even if taken to be true, would only involve question of 'law and order' and not 'public order'. Ms. Kachhavah has placed reliance on the decision of the Apex Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad, AIR 1989 SC 491 and submitted that the facts of the present case are almost identical to the case which was considered by the Honourable the Apex Court and, if the principles laid down in the said decision are considered, the petition deserves to be allowed.

4. On the other hand, Mr. Poojari appearing for Mr. Gohil has tried to support the order of detention on the ground that the petitioner's activities are such that, in future, it may lead to serious hooch tragedy and may cost lives of many innocent persons. Two incidents narrated in the reasons of detention indicate that there was disruption of even tempo of the society. The detaining authority was subjectively satisfied about the activities of the detenu being prejudicial to the maintenance of public order and the petition, therefore, deserves to be dismissed. He has pressed in service the decision in the case of Kodarji Laxmanji Thakore v. Commissioner of Police, 1993 (2) GCD 707 and Mrs. Harpeet Kaur v. State of Maharashtra, A.I.R. 1992 SC 979.

5. It is apparent and evident from the reasons for

detention that the detention of the petitioner is ordered with a view to preventing him from getting involved in activities which are prejudicial to the maintenance of public order. In support of the subjective satisfaction, reasons recorded are that the petitioner is involved in bootlegging and that two incidents are recorded wherein the petitioner tried to disturb public order to pursue his bootlegging activities. In this regard, if the decision of the Apex Court rendered in Piyush Kantilal Mehta (supra) is considered, it is clear that there is a distinction between "law and order" and "public order". While referring to the decision of the Apex Court in the case of Pushker Mukherjee v. State of West Bengal, AIR 1970 SC 852, Their Lordships observed:

"It is true that some incidents of beating by the petitioner had taken place as alleged by the witnesses. But such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order."

It is also observed in the said decision that sub-section (4) of Section 3, although is a deeming provision, it will not be attracted unless the activities of the person concerned affect adversely the maintenance of public order.

6. Keeping in mind the above principles, if the facts on the record of the present matter are considered, there is nothing to indicate direct or indirect involvement of the petitioner in such activities as would prejudice the maintenance of public order. His involvement in bootlegging or trafficking in country made liquor can be dealt with according to the ordinary law of land. The reasons assigned for detention do not indicate any involvement of the petitioner in such activities which may cause hooch tragedy except a statement that country made liquor is injurious to health and that it may cause hooch tragedy and that detenu is aware about it

and still he is trafficking in country made liquor.

7. There is nothing to indicate that the activities of the petitioner has created a general feeling of insecurity or panic or terror among the members of public at large which may give rise to the question of maintenance of public order and, therefore, the incidents which are quoted can, at the most, be said to be questions of law and order.

8. The decision pressed into service by Mr. Poojari in the case of Kodarji Laxmanji Thakore v. Commissioner of Police (supra) indicates that considering the material on record of that case, it was held that the petitioner was engaged in bootlegging activities as defined under Section 2(b) of the PASAA and that there was evidence against him to show that his activities were such that left no doubt that the cumulative effect of which would be such as would disturb public order. The Bench in clear terms observed that if the case is such that would indicate that even tempo of public life is disturbed, the case would fall within the definition of public order. But it also observed that whether even tempo of public life is disturbed or not would be a question to be considered in light of facts and circumstances of each case. As stated above, there is nothing to indicate that even tempo of public life was disturbed. There is nothing to show that there is likelihood of any disturbance to public order and, therefore, this decision cannot help the respondents.

9. In case of Mrs. Harpeet Kaur v. State of Maharashtra, the detenu was engaged in transport of illicit liquor wherein fire arms were used to facilitate the activity which ultimately led to fear psychosis and feeling of insecurity among the witnesses, which facts were brought on record. In the facts of the present case, this decision also cannot help the respondents.

10. The outcome of the above discussion is that the the detention order under challenge, which is at Annexure-A to the petition, deserves to be quashed and set aside and the same is, accordingly, quashed and set aside. The petitioner-detenu is hereby ordered to be released from detention forthwith, if he is not required in any other criminal case or proceedings. Rule is made absolute accordingly.

[ A.L. DAVE, J. ]

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